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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. The latest census of Gibraltar, taken on 14 October 1991, assessed the Territory's civilian population at 26,703, of which 20,022 were Gibraltarians, 3,811 other British subjects, 1,798 Moroccans and 1,072 of other nationalities. The Gibraltar Statistics Office estimated the population in 1997 at 27,192.[2]

II. Political developments

A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). A new Governor, Mr. David Durie, replaced outgoing Governor Sir Richard Luce in April 2000. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom, is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.[3]

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which assists the Governor in an advisory capacity. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister, and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a court of appeals and a supreme court. The supreme court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. In January 1999, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, reaffirmed that the relationship between the United Kingdom and Gibraltar continues to be governed by the 1969 Constitution. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",[4] presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly adopted a resolution setting up a select committee on constitutional reform. The Chief Minister has stated that the Committee is expected to make its report to the full House during 2001.[5] (See paras. 68-70 for further reference to this issue.)

B. General elections

7. The last general elections in Gibraltar were held on 10 February 2000. Approximately 80 per cent of the 18,621 registered voters participated. The incumbent Gibraltar Social Democratic Party (GSD) obtained 58.35 per cent of the vote, followed by the Gibraltar Socialist Labour Party/Liberal Party alliance (GSLP/Liberal) with 40.57 per cent, and independent candidates, with 1.08 per cent. Consequently, GSD won eight seats in the Territorial House of Assembly and the GSLP/Liberal alliance seven seats. Peter Caruana,

leader of the Gibraltar Social Democratic Party, obtained 8,747 votes and was appointed Chief Minister of Gibraltar. The GSLP/Liberal alliance, led by Joseph Bossano, forms the Opposition.[6]

C. Recent developments

8. The March 1999 United Kingdom White Paper stated that the relationship between the metropolitan government and its territories must be seen "within the overall framework of modernization and reform, and within Britain's new international role". One of the Government's recommendations concerned the creation of an Overseas Territories Department within the Foreign and Commonwealth Office to ensure better links between the United Kingdom and its Territories. However, the paper indicated that, because Gibraltar was within the European Union as part of the United Kingdom membership under the Treaty of Rome — the only Overseas Territory with that status — it would continue to be handled principally by the Foreign and Commonwealth Office's European Departments, reporting to the Minister responsible for Europe.

9. The Government of the United Kingdom launched a Strategic Defence Review in May 1997 to examine most areas of the United Kingdom's defence. The resultant White Paper placed renewed emphasis on the rapid deployment of British forces in response to crisis and pointed out that Gibraltar's facilities provided an independent forward operating base for British forces in the Mediterranean and served as a transit base for vessels en route to the Middle East and elsewhere. According to a report published in June 1999 by the Foreign Affairs Committee of the United Kingdom House of Commons, over the last 15 years, the level of military personnel in Gibraltar has declined from 10,000 to under 1,000, and civilian Ministry of Defence employees, from 15,000 to 1,200. Defence-related expenditure has declined from 70 per cent of gross domestic product (GDP) to 7 per cent.[7]

10. Within the framework of defence matters, during the period under review there has been much media coverage of the arrival in Gibraltar in May 2000 of the HMS Tireless, a defective Royal Navy nuclear submarine, which required lengthy repairs in the Territory. According to the Government of Gibraltar, "the submarine's presence in Gibraltar has been a cause for concern expressed by environmentalists both in Gibraltar and across the border in Spain. Throughout, the Government of Gibraltar has impressed upon the Ministry of Defence that the exercise should not pose any threat to public safety, public health or to the environment. For the purpose of monitoring this, the Government of Gibraltar appointed a panel of independent nuclear experts who have closely followed the Ministry of Defence's repair plan and advised the Government on a step by step basis". For its part, the Government of Spain has stated through its Minister for Foreign Affairs that the repairing of the submarine in Gibraltar "is not the scenario that we would have wished (...), the repairing of the HMS Tireless (...) has underscored the fact that Spain cannot remain indifferent to the existence of a military base whose functioning affects the legitimate interests and responsibilities of the Spanish Government".[8] The submarine left Gibraltar on 7 May 2001.

11. On 19 April 2000, Spain and the United Kingdom successfully concluded discussions to resolve certain difficulties which had arisen relating to Gibraltar authorities in the context of European Union and European Community instruments and related treaties. As a result, formal communications and decisions to be notified between Gibraltar authorities and those in other member States under European Union legislation will be conveyed through a unit established in the Foreign and Commonwealth Office in London. The arrangement, which also covered issues of documentation and police cooperation, cleared the way for the passage of certain stalled European Union legislation. It was also agreed that "these arrangements or any activity or measure taken for their implementation or as a result of them do not imply on the side of the Kingdom of Spain or on the side of the United Kingdom any change in their respective positions on the question of Gibraltar or on the limits of that territory." Currently, other Gibraltar-related issues which are raised in the framework of the European Union are participation in European parliamentary elections (see paras. 35-36), border delays (see para. 22), the allocation of telephone lines (see para. 26) and "single sky" aviation agreements (see para. 24).

III. Economic conditions

A. General

12. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades and services in the Territory mainly supply the needs of its population and the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management.

13. The legal tender currency of Gibraltar is the pound sterling. Government of Gibraltar currency notes in circulation on 31 March 2000 stood at £12.4 million. The latest available estimate for national income relates to 1995/96, when per capita GDP was £116.80. Inflation in October 2000 was running at an annual rate of 1.4 per cent, an increase over 1999 figures when the annual rate was 0.2 per cent.

B. Public finance

14. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2000 totalled £140.6 million, whereas departmental expenditure amounted to £104.9 million, compared with £131 million and £93.9 million, respectively, in March 1999. The main sources of Consolidated Fund revenues were income tax, which totalled £49.6 million; import duties, which totalled £27.6 million; and general rates, which totalled £11.2 million.

15. On 31 March 2000, the public debt of Gibraltar stood at £70.6 million. Expenditures from April 1999 to March 2000 were as follows: education, youth, culture and the disabled, £15.7 million; environment, heritage and consumer affairs, £10.0 million; electricity, £10.5 million; police, £6.8 million; tourism and transport, £6.9 million; treasury, £6.0 million; secretariat, £6.4 million; building and works, £5.8 million; support services, £3.4 million; customs, £2.6 million; fire service, £2.4 million.

16. Income tax is charged on income accruing in, derived from or received in Gibraltar by any person or company. It is also charged on dividends, interest and emoluments of office accruing in, derived from or received in any place outside Gibraltar by any person ordinarily resident in Gibraltar, but when that income is taxed in the country of accrual and is not received in Gibraltar, it is exempt. The rates applicable to individuals resident in Gibraltar range from 20 per cent on the first £3,000 of taxable income to 50 per cent after the first £19,500. (See paras. 19-21 for further information on taxation.)

C. Trade

17. Provisional figures for 1999 show that total imports amounted to £480 million and total exports to £248.5 million. Nearly one half of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships, manufactured goods, wines, spirits, malt whisky and tobacco.

18. Import controls did not change during the period under review. Other than a few items of essential foodstuffs, gold, jewellery, petrol, caravans, endangered species and, more recently, fireworks and cigarettes, all goods can be imported under the Open General Licence.

D. Banking and finance

19. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory.[9] At the end of 2000, there were 20 banks authorized to conduct banking business in Gibraltar, five fewer than in December 1999. The banking sector serves offshore and local customers and has balance sheet footings of over £6 billion. As at 31 December 2000, there were also around 8,698 fully paid companies registered under the Companies (Taxation and Concession) Ordinance, up from 8,300 in December 1999. Companies registered under the ordinance pay a fixed annual tax, irrespective of profits made and regardless of whether these profits are received in the Territory. The exemption covers dividends, interest, directors' fees and annual payments

made to non-residents. Unless otherwise authorized, the company must not carry on trade or business in Gibraltar or in the United Kingdom and no Gibraltarian or resident of Gibraltar may have any beneficial interest in the company's shares.

20. According to the administering Power, Gibraltar is required to implement all European Community directives related to financial regulation. Gibraltar has made a commitment not only to implement the necessary measures to the minimum standard required within the European Union, but also to match United Kingdom standards of financial regulation. In that regard, the Government of Spain on several occasions has expressed concern that European Union directives have not been fully implemented in Gibraltar and has disputed information by the administering Power to the contrary. In February 1999, the United Kingdom submitted information to the European Union regarding the number of measures that had been implemented in Gibraltar (39), those that were inapplicable (31) and those that were in the "final stages of transposition" (8). In July 1999, the European Commission decided to refer the United Kingdom to the European Court of Justice for four cases of failure to implement in the Territory of Gibraltar the 4th and 7th Company Law Directives, requiring offshore companies to publish their accounts.[10] According to the administering Power, on 15 October 1999, the Gibraltar House of Assembly adopted the necessary primary legislation to bring into effect the two directives, a step which was notified to the European Commission.

21. A report issued in June 2000 by the Organisation for Economic Cooperation and Development (OECD) included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.[11] According to reports in the *Gibraltar Chronicle*,[12] the Chief Minister has reiterated the Government's commitment to reform taxation, while representatives of the Territory's Finance Centre wish to ensure that this commitment "is balanced with the continued proper operation of the Centre". Discussions between Gibraltarian authorities and OECD have taken place in London and Paris. In May 2001, two senior OECD officials visited Gibraltar as part of the ongoing dialogue and held technical discussions with the Chief Minister and the Minister for Trade, Industry and Telecommunications.[13]

E. Transportation, communications and utilities

22. Road transportation in and out of Gibraltar along the isthmus linking the Territory to Spain has been disrupted since February 1999 when Spain increased controls at its border post with Gibraltar, causing delays of up to six hours for vehicle traffic. According to press reports at the time, the Foreign Ministry of Spain announced that it would maintain the border controls until Gibraltar applied European Union directives to impede tax evasion, drug trafficking and money-laundering (see para. 47 below). Following a complaint on the matter submitted by the United Kingdom to the European Commission, a spokesman for the European Commission stated that there were no limits in the European Union's legislation regarding external border controls. The border issue continues to be raised by the United Kingdom in contacts with the Spanish authorities and the European Commission. The Minister for Foreign Affairs of Spain recently reiterated before the Foreign Affairs Commission of the Spanish Senate that the border controls over persons and merchandise "... are not politically motivated. They are proportionate and fully in line with Community rules. It was not Spain, but the United Kingdom, which erected the border in 1908, excluded Gibraltar from the common customs area and harmonized taxation, and sought to maintain border controls while joining Schengen. If these controls have any failings, it is rather that they are too lax and permissive, when viewed in terms of the gigantic 'duty-free shop' directed at the Spanish market that Gibraltar represents."[14] Regarding this matter, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs has stated to the Foreign Affairs Committee of the House of Commons that "the Government remains of the view that the length and extent of the checks at the border between Gibraltar and Spain remain disproportionate and agrees with the Committee on the importance of the Spanish authorities normalizing the border regime".[15]

23. The total length of roads in the Territory is 26.75 miles (43.05 km). The roads are reported to be in good condition and suitable for vehicular traffic. Five bus routes serviced by 18 buses maintain communication in the Territory. The total number of registered vehicles rose from 31,349 in December 1999 to 32,915 on 31 December 2000.

24. Airline services to Gibraltar have recently increased. In addition to the scheduled flights to the United Kingdom, a Casablanca-Gibraltar route was inaugurated on 2 November 1999. Airmail is dispatched to London, and via London to all destinations worldwide, six times a week by direct flights. Surface mail to and from the United Kingdom is received and dispatched five times a week. According to press reports, disagreement between the United Kingdom and Spain with respect to the legal status of Gibraltar's airport recently blocked European Commission aviation agreements on a "single European sky".[16]

25. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. It has dry-dock facilities and a commercial ship repair yard. Tax concessions are available to shipowners who register their ships at Gibraltar. In 1997, there were 27 merchant vessels and 1,334 yachts registered in Gibraltar with a total gross registered tonnage of 700,000. According to the Territorial Minister for Tourism and Transport, the ships calling at the Territory in 1998 represented a combined registered tonnage of over 117 million gross tonnes. That figure was expected to rise to 125 million tonnes during 1999. The Government of Gibraltar in December 1999 published a policy paper entitled "The Port of Gibraltar: Beyond 2000" with the aim of increasing revenue from existing port activities, generating new business and creating a Port Authority to replace the existing Port Department. The new Port Authority Committee met for the first time in October 2000 to examine development strategies.[17]

26. The local telephone system is operated by Gibraltar NYNEX Communications Ltd., a joint venture company formed in May 1990 and owned by the Government of Gibraltar and Verizon Communication, formerly Bell Atlantic. International telecommunications are operated by Gibraltar Telecommunications International Ltd. (Gibtel), a joint venture of the Government of Gibraltar and British Telecom. According to the administering Power, at the end of 2000, the total number of exchange lines was 23,541, a net increase of 1,625 over the previous year. In 1996, Gibtel and Gibraltar NYNEX lodged formal complaints before the European Commission alleging that the Government of Spain was in breach of European competition law in its non-recognition of Gibraltar's international dialling code and its prevention of mobile roaming agreements.[18] According to the Government of the United Kingdom, the matter of telephone lines in the Territory has been raised both bilaterally in its meetings with Spanish authorities and at the European Commission, where it is still under consideration. According to a statement made by the Spanish Foreign Minister in February 2001, Spain will not accede to Gibraltar's request for one million additional telephone lines because, "from any point of view, it is disproportionate for a population of barely 30,000 inhabitants and, in order to make these lines available, our firms would have to compete with companies that would offer telephone services from Gibraltar without charging the 16 per cent VAT applicable in Spain".[19]

27. The Electricity Department is responsible for the supply of electricity for civilian use in the Territory. The Ministry of Defence operates a separate undertaking to meet defence requirements. During 2000, maximum electricity demand was 23,100 kilowatts and a total of 125,366,325 kilowatt-hours were generated. Gibraltar is dependent on imported petroleum for its energy supplies.

F. Tourism

28. The total number of tourist arrivals in 2000 was 7.3 million compared with 6.1 million in 1999. Hotel arrivals in 2000 were 48,949, up from 42,031 in 1999. There are an estimated 2,000 hotel beds in Gibraltar. The Ministry of Tourism and Transport has introduced a policy for increasing the number of cruise ships that visit the Territory.

IV. Social conditions

A. Labour

29. According to the latest employment survey, the number of employees in Gibraltar was approximately 13,000. In April 1998, average weekly earnings for full-time workers in the Territory were £233.03. At the end of 2000, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 2,247; public administration and defence, 2,031; retail trade, 1,974; building and construction,

1,496; and medical and health service, 885. Press reports indicate that the recent establishment of several United Kingdom betting operators in Gibraltar has created some 700 new jobs.[20]

30. The total number of unemployed persons at the end of 2000 was estimated at 397, down from around 446 at the end of 1999. The standard weekly rate of unemployment benefit is £37.20 with an increase of £18.30 a week for any one dependent adult. A total of 493 claims were received during 2000, of which 435 were allowed.

31. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives. The Trade Unions and Trade Disputes Ordinance of Gibraltar contains provisions similar to those in the United Kingdom for the registration and organization of trade unions. As of December 1995, 20 trade unions were registered in the Territory.

B. Human rights and the status of women

32. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law.

33. Several major international human rights instruments have been extended to the Territory by the administering Power. These include the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

34. The status of women in Gibraltar, whether married or single, with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom. The social security ordinances of Gibraltar provide for the payment of a variety of benefits and allowances to expectant mothers and widows.

35. On 18 February 1999, the European Court of Human Rights determined by a vote of 17 to 2 that, with regard to Gibraltar, the United Kingdom had violated article 3 of Protocol 1 of the European Convention on Human Rights, concerning the right to participate in European parliamentary elections. The proceedings had been initiated by a citizen of Gibraltar, Denise Matthews, who, upon applying to register as a voter in the European parliamentary elections in 1994, had been told that, under the terms of the European Community Act on Direct Elections of 1976, Gibraltar was not included in the franchise. The Court ruled that article 3 of Protocol 1 applied to Gibraltar and that the United Kingdom was responsible for securing the rights guaranteed by it.

36. In response to questions about the voting issue posed by the Foreign Affairs Committee of the House of Commons of the United Kingdom, in October 2000 the Secretary of State for Foreign and Commonwealth Affairs stated the following:

> "The Government's previous response to the Committee made it clear that it was actively seeking enfranchisement before the 2004 elections. The Government remains committed to this goal. The Government is committed to fulfilling its obligation to give effect to the Matthews judgement, and considers that the best method of enfranchising Gibraltar would be by amendment to the 1976 European Community Act on Direct Elections. It is continuing its efforts to this end. But other options, including unilateral action, remain under consideration".

C. Environment

37. In 1996, the Environmental Health Department, which was a territorial Government department, ceased to exist. The functions formerly carried out by the Department have been transferred to a fully privatized Environmental Agency. The chief Environmental Health Officer is responsible for the overall operation of the Environmental Agency and is answerable to the Minister for the Environment and Health.

38. The Nature Protection Ordinance (1991) protects Gibraltar's terrestria' and maritime life and provides for the creation of nature reserves such as that declared on an area of the Upper Rock. The United Kingdom has ratified a number of environmental conventions on

behalf of Gibraltar. The Control of Trade in Endangered Species Ordinance (1998) complies with international and European Union regulations. The European Habitats Directive has been implemented and the designation of sites under the Natura 2000 programme is in progress.

D. Housing

39. According to reports of the administering Power, the Government of Gibraltar has pursued a policy of increased home ownership both to alleviate the housing shortage and to reduce the burden of increasing repair and maintenance costs for its rented accommodations. Home ownership in Gibraltar has increased from a level of 6 per cent in 1985 to 25 per cent in 1994, and to approximately 34 per cent in 1999. In 2000, there has been no noticeable increase in home ownership, but the Government has announced its intention to construct more apartments for sale in the near future. At the end of 2000, the government housing waiting list contained 432 applicants, compared with 570 at the end of 1999.

E. Social security and welfare

40. The contributory schemes of the Social Security system cover all peoples employed under a contract of service and, as from 1975, the self-employed. There is provision also for those who cease to be compulsorily insured to become voluntary contributors. The schemes are financed from weekly contributions paid by employers, workers and the self-employed. The benefits paid under the various Social Security Ordinances cover industrial accidents and diseases, unemployment, old age pensions, guardians' allowances, widows' benefits, maternity grants and allowances and death grants.

F. Public health

41. The Gibraltar Health Authority is responsible for providing health care in the Territory. The Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment. The Expenditure of the Gibraltar Health Authority for the period 1 April 1999 to 31 March 2000 was £28.4 million.

42. St. Bernard's Hospital, with a total of 166 beds, provides comprehensive out-patient services and in-patient treatment for acute medical and surgical cases. It also has a maternity section and two wards for elderly patients. The King George V Psychiatric Unit has 60 beds and provides diverse types of psychiatric treatment, including in-patient and out-patient services. The Primary Care Centre houses the General Practice Surgeries, the child welfare and school medical services (which include immunization and vaccination), the dental clinics and health visitors. In his New Year Message of 5 January 2001, the Chief Minister stated that the construction of a new hospital at Europort would begin during 2001.

43. According to press reports, Gibraltar has 90 registered medical practitioners. These include 56 doctors, 14 dental practitioners and 20 pharmacists. A Medical Registration Board was established as a result of the Medical and Health Ordinance of 1997. The Board monitors the annual registration of medical specialists wishing to practice in Gibraltar. A programme of visits by consultants from the United Kingdom covers specialties such as paediatric neurology, cardio-thoracic surgery and plastic surgery.

G. Public education

44. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2000 was £15.26 million. A programme of major improvements to government schools was completed in 2000 at a cost of £1.6 million.

45. As of 2000, there were 13 primary schools (11 of them Government-run, one private and one services school) with a total of 3,829 students enrolled. There were also four single-sex secondary schools, two of which were Government-run, with a total of 1,787 students. The remaining two secondary schools were private schools catering mainly for Jewish girls and boys. There is also a technical and vocational college with 235 enrolled students. The number of teachers employed in Gibraltar during the 2000/01 academic year is 364. All tertiary education is sponsored and students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. Currently, 605 Gibraltarians are reportedly pursuing university studies in the United Kingdom.

46. According to the Chief Minister, efforts are under way to provide greater recreation facilities for Gibraltar's youth, through improvements to the Victoria Stadium Sports Complex, the construction of a new Skate Park and the planning of the proposed King's Bastion Youth Leisure Centre.

H. Crime and crime prevention

47. The White Paper (see para. 6 above), under the heading "Encouraging good government — combating drug trafficking and drugs-related trade", noted legislation enacted by the local Government in Gibraltar in 1995 and 1996 that banned Gibraltar-based fast boats. According to information supplied by the administering Power, the activities of Gibraltar-based fast boats and rigid inflatables had been effectively eliminated and illicit trafficking involving Gibraltar had ceased to be a problem. During the period under review, the Government of Spain continued to express concern at what it considers to be the use of Gibraltar for laundering proceeds from drug trafficking or other illicit activities. The administering Power has pointed out that Gibraltar has introduced money-laundering legislation meeting United Kingdom and European Commission standards.

48. According to the Government of Gibraltar, the Royal Gibraltar Police (RGP) enjoys a very satisfactory level of manpower, funding and other resources relative to Gibraltar's size, law and order problems and financial resources.[21] In 1998, £800,000 was invested in a new radio communications system for RGP, while during the 2000 financial year, the Government planned to invest £200,000 in a new police launch and £350,000 in a new marine section headquarters, primarily for RGP. From April to December 2000, 1,296 minor offences (such as those related to liquor, disorderly conduct and firearms violations) were reported and during the same period 1,016 persons were arrested or reported for these minor offences. Also reported from April to December 2000 were 1,246 serious crimes (such as those related to violence against the person, sexual offences, burglary and drugs). The Penal Administration of Gibraltar has one prison with 36 cells. The total number of prisoners received during 2000 was 218 with a daily average prison population of 19 persons.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

49. The Special Committee considered the question of Gibraltar during the fifty-fifth session of the General Assembly at its 5th meeting, on 5 July 2000, and had before it a working paper concerning the Territory (A/AC.109/2000/10). The Special Committee heard a statement made by the Chief Minister of Gibraltar, Peter Caruana. In addition, in accordance with a decision taken at the outset of the meeting, a statement was made by Joseph Bossano, Leader of the Opposition in Gibraltar. The Special Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. The representative of Spain made a statement at the meeting.

50. At the same meeting, the Special Committee decided to continue its consideration of the question at its next session, subject to any directives that the General Assembly might give in that connection at its fifty-fifth session and, in order to facilitate consideration of the question by the Fourth Committee, to transmit the relevant documentation to the Assembly.[22]

B. Special Political and Decolonization Committee (Fourth Committee)

51. At its 5th meeting, on 27 September 2000, the Fourth Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana (see paras. 56-61 below) and a statement by petitioner Joseph Bossano, Leader of the Opposition in Gibraltar (see A/C.4/55/SR.5). At its 7th meeting, on 29 September, the Committee heard a statement by the representative of Spain (see para. 63 below). At the same meeting, the representative of the United Kingdom spoke in exercise of the right of reply (see A/C.4/55/SR.7).

52. At its 8th meeting, on 3 October 2000, the Committee had before it a draft decision entitled "Question of Gibraltar" (A/C.4/55/L.4), submitted

under agenda item 18. At the same meeting, the Committee adopted the draft decision without a vote (see A/C.4/55/SR.8).

C. Action by the General Assembly

53. At its 83rd plenary meeting, on 8 December 2000 (see A/55/PV.83), the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted decision 55/427 without a vote. The decision read as follows:

> "The General Assembly, recalling its decision 54/423 of 6 December 1999, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, inter alia, the following:
>
> > 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',
>
> "Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which was held in London on 10 December 1997, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. Future status of the Territory

A. Position of the administering Power

54. At the 15th plenary meeting of the General Assembly at its fifty-fifth session, on 14 September 2000 (see A/55/PV.15), the representative of the United Kingdom, in exercise of his right of reply,[23] stated:

> "The long-standing position of the British Government on this matter is well known to the Government of Spain. I will simply restate it briefly here.
>
> "British sovereignty over Gibraltar was clearly established in the Treaty of Utrecht. This legal fact is incontrovertible. Moreover, the British Government stands by the commitment to the people of Gibraltar as contained in the preamble to the 1969 Constitution of Gibraltar, which states that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes.
>
> "The British Government believes that issues relating to Gibraltar can be resolved only by building trust, cooperation and dialogue and through direct talks aimed at overcoming differences, such as those established under the 1984 Brussels Declaration.
>
> "We attach continuing importance to our dialogue with Spain."

55. The above position was reiterated by the representative of the United Kingdom speaking in exercise of the right of reply at the 7th meeting of the Fourth Committee, on 29 September 2000 (see A/C.4/55/SR.7).

B. Position of the territorial Government

56. At the 5th meeting of the Fourth Committee, on 27 September 2000 (see A/C.4/55/SR.5), the Chief Minister of Gibraltar, Mr. Caruana, stated that, in addressing the General Assembly, the Minister for Foreign Affairs of Spain had deplored Gibraltar's continuing colonial status and suggested that the United Nations should finish the task of decolonization and eliminate the last vestiges of colonialism. One

could only agree with that viewpoint, but the people of Gibraltar disagreed about the methods envisaged for achieving that goal. The people of Gibraltar enjoyed the inalienable right to self-determination as a colonial people, but Spain asserted that they were not a colonized people but rather the descendants of the colonizing people, as Spain's representative to the Fourth Committee had put it at the fifty-fourth session of the General Assembly. Residents of Gibraltar were in reality the descendants of peoples from many parts of Europe who had settled in the colony after 1704. The peoples who, throughout much of South America, had exercised rights equivalent to the modern right to self-determination were in fact the descendants of the colonizing people, namely Spain. There was no alternative to the principle of self-determination: that had been acknowledged by members of the Special Committee and the Fourth Committee. Spain nevertheless asserted that Gibraltar should be decolonized on the basis of a so-called principle of "territorial integrity". No such principle with regard to decolonization was recognized under international law, as demonstrated by the advisory opinion in the case on Western Sahara of the International Court of Justice, in which the Court had indicated that the freely expressed will of the people was the very sine qua non of decolonization.

57. Mr. Caruana pointed out that Spain, on the other hand, asserted that there was a special United Nations doctrine on colonies that were what it called "territorial enclaves". The people of Gibraltar considered that there was no such doctrine in the United Nations or in international law. The sole principle of decolonization applicable to any colonial territory was self-determination. Spain asserted that the application of the principle of self-determination to the decolonization of Gibraltar and its people would be a breach of its territorial integrity and national unity and thus incompatible with the purposes and principles of the Charter. Residents of Gibraltar considered that such an assertion had no application to the decolonization of Gibraltar, because if Spain's territorial integrity had indeed been breached, that had occurred 296 years before and was not the result of the exercise of the right to self-determination by the people of Gibraltar. The principle of territorial integrity applied solely in cases when the secession of territories from a State could not be justified by the principle of self-determination. That was not the case of Gibraltar or any other colony.

58. Mr. Caruana also stated that Spain asserted that a provision in the Treaty of Utrecht of 1713 denied the people of Gibraltar the right to self-determination. Even Gibraltar's administering Power, the United Kingdom, having once claimed that the Treaty did not affect the right to self-determination, now stated that although Gibraltar had that right, it was curtailed by the Treaty of Utrecht. The people of Gibraltar considered that, no matter how the Treaty was interpreted, nothing could displace the right to self-determination, since it was enshrined in the Charter of the United Nations, which took precedence in accordance with international legal principles. In the light of those contradictions, the Fourth Committee should call for the International Court of Justice to determine whether the principle of self-determination of the people of Gibraltar was applicable to the decolonization of Gibraltar; if it was, whether that right was curtailed by the 1713 Treaty of Utrecht, in any way; and, if so, in what way. Gibraltar's Parliament had unanimously adopted a resolution to that effect. Recalling Spain's assertion that, even though Gibraltar was a colony of the United Kingdom, the people of Gibraltar, as decedents of the colonizing people, were not a colonial people and accordingly could not enjoy the right to self-determination, he pointed out that no one who visited Gibraltar could think that its residents were not a distinct people. Their origins were a mixture of Mediterranean and British stock, an ethnic cocktail that mirrored that historical and modern composition of many States Members of the United Nations and was complemented by a diversity of cultural influences. The residents of the Territory formed a distinct and unique people that could most accurately be described as "Gibraltarians".

59. Gibraltar enjoyed a large measure of self-government through its own elected Government and the Parliament in which its laws were adopted. It had its own public administration, police and judiciary and was operating a successful, diverse and modern economy. Spain gave a much less complimentary description of Gibraltar's economy, a description which was, no doubt, politically motivated. The Fourth Committee must take neither Spain's nor Gibraltar's word about the situation: it was simply necessary to visit the Territory, assess on the spot the economic, political, social and cultural realities and determine whether the inhabitants were a distinct people with the right to decolonization through the exercise of self-determination.

60. Gibraltar was not afraid of a dialogue with Spain and sought to develop good relations with it, but a dialogue about Gibraltar must be structured in such a way as to give the people of the Territory a voice, in the form of elected leaders and Government. That was why the decision put forward by the Fourth Committee year after year, which called for bilateral dialogue between the administering Power, the United Kingdom, and a third-party territorial claimant, Spain, was unhelpful. Spain proceeded from the thesis that it was a case, not of decolonization, but of a bilateral sovereignty dispute in which the people of Gibraltar had no voice. In fact, no progress had been made in bilateral talks on the issue since they had commenced in 1984. He therefore renewed his appeal to the Fourth Committee to introduce into its annual decision a call for constructive dialogue in which representatives of the people of Gibraltar would participate.

61. Referring to the Special Committee's intention to formulate an updated plan of action for the eradication of colonialism by developing a constructive programme of work on a case-by-case basis for all the Non-Self-Governing-Territories by the end of 2000, he recalled that he had urged the Special Committee, when developing the programme for Gibraltar, to include in it four points: dispatch of a visiting mission to Gibraltar; proclamation by the Special Committee of its recognition of the inalienable right of the people of Gibraltar to self-determination; referral of the issue, in the event the Special Committee had any doubts, to the International Court of Justice; and a call by the United Nations for dialogue with proper representation for the people of Gibraltar.

C. Position of the Government of Spain

62. At the 15th plenary meeting of the General Assembly, on 14 September 1999 (see A/55/PV.15), Mr. Josep Piqué, Foreign Minister of Spain, stated the following:

> "Another of the United Nations goals must be to conclude the decolonization process worldwide, by doing away with the last vestiges of colonialism. One of them persists, as a painful anachronism, in Spanish territory. I am, of course, referring to Gibraltar where, nearly three centuries after its population was expelled and the Rock was occupied by British troops, a colonial situation still lingers. This is an infringement of my country's territorial integrity and contravenes the provisions of General Assembly resolution 2353 (XXII). Regaining sovereignty over this part of our territory is a long-standing goal for Spain, which is fully in favour of a meaningful dialogue. It is regrettable that the United Kingdom has not yet shown a genuine political will to solve this problem. Because of this, 15 years after the start of bilateral talks in the framework of the Brussels process and despite the decisions of this General Assembly, we have not registered any progress at all on this matter, in spite of several concrete proposals put forward by our side."

63. At the 7th meeting of the Special Political and Decolonization Committee (Fourth Committee), on 29 September 2000, the representative of Spain stated the following:

> "This year once again the Spanish delegation is appearing before this Committee to address a question that is particularly painful for my country: the United Kingdom's occupation of Gibraltar, a part of Spanish territory. The Spanish Government's position is well known to the members of the Committee. It was reaffirmed by the Spanish Minister for Foreign Affairs in the General Assembly on 14 September 2000: Gibraltar is a colony subject to the decolonization process; the decolonization of Gibraltar must be carried out in accordance with the principle of territorial integrity as laid down in the United Nations doctrine contained in various resolutions, such as General Assembly resolutions 1514 (XV) and 2625 (XXV); regaining sovereignty over Gibraltar is an objective which Spain will not relinquish.
>
> "To date, the negotiation process between Spain and the United Kingdom has made no significant progress. We regret that the United Kingdom is still refusing to work with us to end this colonial situation, despite the commitment that it made more than 15 years ago in the Brussels Declaration and the decisions that are adopted year after year by the General Assembly.
>
> "Failing the start of serious negotiations to seek a resolution of the dispute between the United Kingdom and Spain, the only ones competent to discuss the sovereignty issue, Gibraltar has become, in addition to a problem of

sovereignty, a problem of relations between neighbours. With the United Kingdom's approval and under the protection of the arrangements and special conditions introduced by the colonial Power, Gibraltar is today a gigantic 'duty-free shop' directed at the Spanish market, subjecting Spain to widespread economic and fiscal dumping because of the lack of transparency in its financial and corporate systems and impoverishing the surrounding region by distorting the conditions of competition. In addition, in the Territory there is a British military base, the operation of which right next to Spain directly affects our legitimate security interests and, in particular, the interests of the nearly 300,000 inhabitants of the area adjacent to the colony."

64. During the period under review, the Spanish position on Gibraltar has been reiterated by the Minister for Foreign Affairs, in terms similar to those reflected in paragraphs 62 and 63 above, in statements made to the Foreign Affairs Committees of the Spanish Senate and the Spanish Congress on 8 February 2001 and 14 March 2001, respectively. Following the latter statement, a plenary session of Congress approved a motion reaffirming the position of Spain on the matter. In addition, according to press reports, the Spanish President stated on 15 March 2001, that "any change in Gibraltar's status represents a serious violation of the Treaty of Utrecht and would therefore be considered by Spain as a very grave act".[24]

D. Anglo-Spanish negotiations

65. No meetings were held within the negotiating process established by the Brussels joint communiqué of 27 November 1984 during the period under review. It will be recalled that, according to the communiqué, the Ministers for Foreign Affairs of Spain and the United Kingdom agreed to hold annual meetings alternately in each capital with the objective of reaching a definitive solution to the problem of Gibraltar. The last meeting indicated as being held within the Brussels framework was on 10 December 1997. During that meeting the Spanish Minister for Foreign Affairs made a formal offer to the United Kingdom Government regarding a future status for Gibraltar, whereby the Territory would come under Spanish sovereignty, yet retain a large degree of local political and administrative autonomy (see A/AC.109/2112, para. 72). The Government of the United Kingdom has not formally responded to the proposal.

E. Anglo-Gibraltarian discussions

66. During the period under review, there were regular meetings and discussions between the United Kingdom and Gibraltarian ministers and officials. Those discussions included talks on the modernization of Gibraltar's Constitution, as referred to in paragraph 6 above. According to the Government of Gibraltar, the recently established Select Committee on Constitutional Reform aims to reach "consensus on constitutional proposals to submit to the United Kingdom such as would put an end to the colonial status of Gibraltar in a manner acceptable to the people of Gibraltar in an act of self-determination". Speaking before the United Kingdom's House of Commons Select Committee on Foreign Affairs, the Minister for Europe stated on 7 March 2001 that "the people of Gibraltar live with the situation; their wishes and the wishes of the Government of Gibraltar are paramount, and we will continue to listen to what they have to say".[25]

67. In this respect, both the British and the Spanish media have reported a Foreign Office spokesperson reiterating that the United Kingdom Government will consider Constitutional reform proposals put to it by Gibraltar, while adding that "any proposal would have to be in line with international obligations, including the Treaty of Utrecht".[26]

68. A further statement issued by the Foreign and Commonwealth Office on 11 April 2001 reiterated the United Kingdom's defence of Gibraltar's interests: "We attach great importance to resolving what are very important issues for Gibraltar — border delays, telephone lines and European Parliament voting rights. The Minister for Europe, Keith Vaz, and senior officials of the Foreign and Commonwealth Office have regular meetings with the Chief Minister of Gibraltar and there are ongoing discussions on key matters of mutual interest. We believe that the best way forward is building confidence and encouraging a climate of cooperation. The arrangements reached last year on a number of issues concerning Gibraltar and the European Union have already shown what can be

achieved in this climate. We need to build on this process".[27]

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 12 April 2001, as well as from the official documents of the Government of Spain.

[2] Official web site of the Government of Gibraltar (http://www.gibraltar.gov.gi/).

[3] *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7-23.

[4] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

[5] Government of Gibraltar, Chief Minister's New Year Message, 5 January 2001.

[6] Gibraltar Elections 2000 web site (http://www.gibraltar.gi/election).

[7] Report by the Foreign Affairs Committee, House of Commons, 8 June 1999 (accessed at http://www.parliament.uk/).

[8] Statement by the Minister for Foreign Affairs of Spain to the Foreign Affairs Committee of the Spanish Congress, Madrid, 29 November 2000.

[9] Official web site of the Government of Gibraltar (http://www.gibraltar.gov.gi/).

[10] European Commission statement IP/99/439, 2 July 1999.

[11] Organisation for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.

[12] *Gibraltar Chronicle*, 24 February 2001.

[13] Government of Gibraltar, Press Release, 4 May 2001.

[14] Statement by the Minister for Foreign Affairs of Spain to the Foreign Affairs Commission of the Spanish Senate, Madrid, 8 February 2001.

[15] Ninth Report of the Foreign Affairs Committee, Session 1999-2000; Gibraltar Follow-up. Response of the Secretary of State for Foreign and Commonwealth Affairs, October 2000.

[16] Reuters, 8 March 2001; *El Pais*, 8 March 2001.

[17] Government of Gibraltar, Press Release, 10 October 2000.

[18] Government of Gibraltar, Press Release, 23 February 2001, and Select Committee on Foreign Affairs, Appendix 4, Memorandum submitted by the Foreign and Commonwealth Office.

[19] Statement by the Minister for Foreign Affairs of Spain to the Foreign Affairs Commission of the Spanish Senate, Madrid, 8 February 2001.

[20] *Financial Times*, 18 October 2001.

[21] Government of Gibraltar, Press Release, 15 May 2001.

[22] A/55/23 (Part II), paras. 58-65 (to be issued as *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 23*).

[23] To the statement of the representative of Spain (para. 62 below); see A/55/PV.15.

[24] Reuters/EFE, 15 March 2001; *El Pais*, 16 March 2001.

[25] Select Committee on Foreign Affairs, Minutes of Evidence, 7 March 2001.

[26] 16 March 2001 editions of *Gibraltar Chronicle*, *ABC*, *Diario 16* and *La Vanguardia*.

[27] Official web site of the United Kingdom Foreign and Commonwealth Office (www.fco.gov.uk/news), Press Release, 11 April 2001.